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DE RUEHSJ #0390/01 1322229
ZNR UUUUU ZZH
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FM AMEMBASSY SAN JOSE
TO RUEHC/SECSTATE WASHDC PRIORITY 0827
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE PRIORITY

UNCLAS SAN JOSE 000390

SENSITIVE
SIPDIS

DEPT FOR EEB/TPP/IPE JURBAN AND SKEAT AND WHA/EPSC SGARRO;
PLEASE PASS TO USTR AMALITO, DOLIVER AND GVETERE; PLEASE
PASS TO DHS MMDUDEK; PLEASE PASS TO DOC AWILSON; PLEASE
PASS TO DOJ JZACHARIA AND BLIPMAN; PLEASE PASS TO DOL
MPETTIS; PLEASE PASS TO LOC PPINHA; PLEASE PASS TO NSC DBELL

E.O. 12958: N/A
TAGS: [CS](#) [ECON](#) [ETRD](#) [KIPR](#) [PGOV](#) [PREL](#)
SUBJECT: COSTA RICA DISAPPOINTED BY WATCH LIST STATUS

REF: A. STATE 42002
[1](#)B. SAN JOSE 168

[1](#)1. (SBU) SUMMARY: On April 29, we delivered to the Ministry of Foreign Trade (COMEX) the news that Costa Rica would continue on the Special 301 Watch List (Reftel A). Disappointed COMEX staff listened patiently, then countered with a litany of reasons why the USG should elevate Costa Rica's IPR status. Key reasons included the implementation of intellectual property rights (IPR) legislation as part of the entry-into-force of CAFTA-DR, COMEX's view of a "softening" in attitude (i.e., less opposition) toward IPR enforcement by the GOCR's recalcitrant Fiscal General, and an appointment of an individual in the office of the Fiscal General to the National (inter-agency) Commission of Intellectual Property. In response, we emphasized the importance of IPR cases matriculating in the judiciary to prosecution. We also discussed training for private sector attorneys -) in response to COMEX's concern of IPR inexperience in the private sector -- and tracking IPR cases in the judicial system. END SUMMARY.

OPENING REMARKS

[1](#)2. (SBU) Econ Chief Mark Kissel presented the results of the 2009 Special 301 Report to COMEX on April 29. He discussed Costa Rica maintaining its status as a Watch List country and elaborated on Post,s IPR strategy (reftel B). COMEX interlocutors Esteban Aguero, Maria Jose Cordero, and Jessica Ward Campos initially offered a tepid response and then expanded by expressing their disappointment in the USG,s decision.

A REWARD FOR CAFTA-DR IMPLEMENTATION?

[1](#)3. (SBU) COMEX believed that Costa Rica deserved to be moved off the Watch List for six reasons:

-- the passage of CAFTA-DR implementing legislation marked a significant advancement in the IPR legal environment in Costa Rica, plus the "implementation was more strict (in Costa Rica) -) legally) than in any other country in Central America";

-- controversial Fiscal General (Attorney General) Francisco Dall,Anese had not made recent remarks re-enforcing his low ranking of IPR enforcement as a judicial/law enforcement priority;

-- Dall,Anese,s office had made &internal8 changes to facilitate IPR enforcement;

-- prosecutors in the Fiscalía General were receiving ongoing IPR training;

-- Maribel Bustillo Piedra had been appointed as the Public Judiciary Ministry's (i.e. the judiciary branch's) representative to the National Commission of Intellectual Property, marking a key step forward for IPR enforcement; and

-- Bustillo actively participated in the Commission's activities, including weekly meetings.

PRIVATE SECTOR (IN)COMPETENCE

14. (SBU) Econ Chief stressed the need for the USG to see results in the form of judicial processing of cases. COMEX replied that the private sector is where the process needs to start. However, the hurdle to this first step, according to COMEX, is the "laziness" of private sector attorneys. Private sector attorneys know how to file a patent form, but do not know the IPR legal code in Costa Rica. COMEX further contended that companies who filed complaint letters (e.g. Levi Strauss) in the Special 301 electronic case file are unaware of the available procedures and remedies.

15. (SBU) Econ Chief then turned the conversation in the direction of training for private sector attorneys. In order to produce case files, the private sector needs to (1) know how to construct and manage a case and, frankly, (2) understand the potential to generate fees in a "new line" of legal business. COMEX staff agreed to cooperate on training for private sector attorneys. (NOTE: We have already received an inquiry from a private sector firm requesting training opportunities.). In addition, Econ Chief suggested that COMEX compile a "case roster" which it could share and further develop with the Embassy.

COMMENT: FORM OVER SUBSTANCE, AGAIN

16. (SBU) COMEX,s reaction once again reflects Costa Rica's unwavering yearning for special attention due to its "better than the others" exceptionalism. COMEX wanted a &reward8 simply for putting in place the framework for stronger IPR enforcement. This progress is welcome, but it is form, not substance. Vigorous IPR investigations and prosecutions are still lacking, as we have seen in tepid Costa Rican law enforcement in other areas, such as TIP and fisheries. Despite the due political credit the GOCR deserves for winning the political battle to ratify and implement CAFTA-DR, it is IPR case results that will elevate Costa Rica,s Special 301 status in the future. We will work with the GOCR on IPR enforcement guidance and training, as this is a major component of Post,s overall law enforcement strategy, but we cannot do their work for the.

CIANCHETTE